

In the Claims:

Amend claim 2 to read as follows:

2. (Amended) An aqueous solution comprising:
potassium sorbate dissolved in tap water or deionized water in which the concentration of potassium sorbate is in the range of 0.30% to 1.75%, and the aqueous solution having a pH of 4.5 or higher;
providing a solution that has lower electrical conductivity and lower oxygen content than tap water such that when the solution is exposed to a metal surface the metal surface will remain free of rust, corrosion and scale.

REMARKS

The Office Action has been carefully considered. The application now is believed to be in condition for allowance, in view of the above amendments and for the following reasons.

Claim 2 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner has suggested that claim 2 be presented in independent form rather than depending from claim 1. The Examiner's suggestion has been followed and claim 2 is hereby presented as an independent claim. It is respectfully requested that this rejection be withdrawn.

Claims 1 and 2 were rejected under 35 U.S.C. § 102(e) as being anticipated by the patent to Nakajima et al No. 6,027,687. Reconsideration of this rejection is hereby solicited.

The Nakajima et al reference utilizes a sulfite-based oxygen scavenger composition comprising: 3-30 weight % of at least one selected from a group consisting of Na_2SO_3 , K_2SO_3 , NaHSO_3 and KHSO_3 ; 1-20 weight % of NaOH or KOH ; 0.2-2 weight % of potassium sorbate; and 5-500 ppm of CoSO_4 . Thus the Nakajima et al composition includes four (4) different chemical ingredients one of which is potassium sorbate. Applicant's claimed product contains only one of the ingredients contained in the Nakajima

et al composition. The Examiner's reliance on MPEP 2112.01 for the proposition that compositions comprising the same components present in the same amounts presumably have the like properties and characteristics, does not appear appropriate in the instant situation. It is noted that MPEP 2112.01 states:

Products of identical chemical composition can not have mutually exclusive properties.

Since applicant's product and the product of the applied reference are not "of identical chemical composition" it appears that this section of the MPEP is not applicable. If the Examiner continues to apply this rejection it is respectfully requested that the Examiner be more specific in how this rejection is in compliance with the law as explained in MPEP 2112.01. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 1 and 2 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nomura et al Patent No. 4,559,103. Reconsideration of this rejection is hereby solicited.

The Nomura et al Patent is directed to a packaging paper and method of producing this packaging paper (to be used for packaging metallic materials) comprising the steps of: pulping; conducting the paper making step in the neutral region of pH values between 6 and 8 and applying a rust-prevention agent and/or a sterilizer to the paper sheet. The Examiner has compared the results of Examples 15 (70% rust area) and 24 (5% rust area) to conclude that the enhanced rust prevention was the result of including potassium sorbate as one of the materials as compared to when potassium sorbate was absent. However, this is not a valid comparison because although Example 15 did not include potassium sorbate there were chemicals in addition to potassium sorbate used in Example 24. Perhaps some of the other chemicals or combinations of these chemicals prevented the rust in Example 24. It cannot be logically concluded from a comparison of Examples 15 and 24 that potassium sorbate was responsible for the enhanced rust prevention found in Example 24. Reconsideration and withdrawal of this rejection is respectfully requested.

Thus, the applicant maintains that claims 1 and 2 are not anticipated by or obvious over the prior art references. The applicant therefore requests reconsideration and allowance of this application. If the rejections are not withdrawn and this application is not allowed, it is respectfully requested that this Amendment after Final Rejection be entered since it places this application in better condition for appeal.

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Respectfully submitted,



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APPENDIX A
SERIAL NO. 09/336,612
“SORBIC ACID AND/OR ITS DERIVATIVES, SUCH AS POTASSIUM SORBATE, AS
A PREVENTATIVE FOR RUST, CORROSION AND SCALE ON METAL”
Bernard Bendiner

In the claims:

Amend claims 2 as follows:

2. [The aqueous solution as set forth in claim 1]An aqueous solution
comprising:

potassium sorbate dissolved in tap water or deionized water in which the
concentration of potassium sorbate is in the range of 0.30% to 1.75%[.], and the
aqueous solution having a pH of 4.5 or higher;

providing a solution that has lower electrical conductivity and lower oxygen
content than tap water such that when the solution is exposed to a metal surface the
metal surface will remain free of rust, corrosion and scale.